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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)
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	Application Number	Filed
	10/531,260	April 13, 2005
	First Named Inventor	
		TARBELL et al.
	Art Unit	Examiner
	2164	Yuk Ting Choi
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> Applicant/Inventor</p> <p><input type="checkbox"/> Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> Attorney or agent of record 38,009 (Reg. No.)</p> <p><input type="checkbox"/> Attorney or agent acting under 37CFR 1.34. Registration number if acting under 37 C.F.R. § 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*</p> <p><input checked="" type="checkbox"/> *Total of 1 form/s are submitted.</p>		



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October 27, 2009

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STATEMENT OF ARGUMENTS IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW

The instant application includes two independent claims (i.e., claims 46 and 68). Claim 46 is directed to a computer implemented method of journaling in a database journal changes to system objects in an operating system with a processor, the method including i) executing a dummy function in place of a system function when the system function is called, ii) executing the system function under operation of the dummy function, and generating copies of system objects, changed by the execution of the system function, for journaling.

Similarly, claim 68 is directed to a system for journaling in a database journal changes to system objects including i) a processor adapted to execute a dummy function in place of a system function when the system function is called, wherein the dummy function executes the system function and generates copies of system objects resulting from the execution of the system function execution for journaling, and ii) memory for use by the processor during execution.

Claims 46 and 68 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Bills (U.S. Publication No. 2002/0152195) in view of Tanaka (U.S. Patent No. 6,665,735). This rejection is erroneous and should be reversed for at least the following reasons.

Bills teaches a method of recording data changes to objects. The method includes the steps of determining if there is an indication within the object that any changes to that object should not be stored in the object. If there is such a determination, then the changes are stored only in a journal entry in a journal. Therefore, Bills is not concerned with storing objects after they have changed. Instead, Bills is solely concerned with avoiding storing those changed objects. This is clearly different from claims 46 and 68, wherein copies of system objects are changed by the execution of a system function, and those changed system objects are generated for journaling. Bills does not disclose generating copies of system objects, changed by the

execution of the system function, for journaling. Bills only discloses a journal for storing changes made to the objects, not generating copies of changed system objects.

The introduction of the instant application emphasizes that the differences between selectively storing changes to a journal entry (as in Bills) and generating copies of system objects, changed by the execution of the system function, for journaling (as in claims 46 and 68) have been contemplated. For example, in discussing techniques similar to those disclosed in Bills, the specification notes that:

“The creation, deletion and changing of system objects may be recorded in the Audit Journal for the primary purpose of providing an audit of activity related to these objects. When viewed with the intention of providing replication of these objects to a remote or local (copy) the Audit Journal has several significant drawbacks. . . .”

The specification then goes on to list four significant drawbacks of these types of systems. See pages 1-2 of the specification in this regard.

The invention defined by the claims provides advantages over the journaling prior art in that journaling changes are able to be made without being restrained to the journaling of particular objects as defined by the current database version, whereas the journaling prior art is focused on journaling system objects only for a portion of defined objects as defined by the current database version. Indeed, from this prior art description, it is clear that claims 46 and 68 provide useful solutions in the art of database journaling that clearly was not available prior to its inception, e.g., that of providing a general manner of creating journaling functionality without being restrained to particular defined objects.

The Office Action argues that paragraphs 5 and 14 of Bills correspond to the above-identified features of the independent claims. These paragraphs describe a journal file system (JFS). According to Bills, a JFS can 1) record changes to objects, 2) enable single system recovery, and 3) provide for recovery of a saved object to a known state. Paragraphs 9-11

describe these “areas of support,” which merely relate to techniques for leveraging the record of changes that are made to journaled objects. Indeed, paragraphs 9-11 make clear that it is the changes to the objects that are recorded and used by Bills -- not the changed objects themselves.

The Office Action also cites to paragraph 58 of Bills for the generating copies of system objects for journaling. This paragraph contemplates creating new objects and modifying existing objects, which ultimately could lead to a journaling step (see step 518 in Fig. 5 of Bills), depending on the circumstances. Bills makes clear that such a journaling step creates a journaling record 61, which is a part of its journal log 60, as shown in Fig. 2 thereof. This journal log 60 is a part of Bills’ JFS 56. Bills does not, however, teach or suggest generating copies of system objects for journaling as a result of creating a new object or modifying an existing object in this journal log 60 -- or anywhere else in its rather conventional JFS 56. In other words, the JFS 56 of Bills does not store objects after they have changed; it merely keeps a record of the changes that were made and stores an indication as to “whether a journal record 61 should be journaled upon the occurrence a predefined event affecting an object” (paragraph 45).

The Office Action therefore errs, as Bills does not teach or suggest generating copies of system objects, changed by the execution of the system function, for journaling. Citation to the other applied reference (i.e., Tanaka) does not cure this fundamental deficiency of Bills.

Reversal of the § 103 rejections therefore is respectfully requested.

In addition to the above, the Office Action admits that Bills does not teach or suggest the steps within a method of journaling changes to system objects in a database journal of executing a dummy function in place of a system function when the system function is called, where the system function is then executed under operation of the dummy function, and cites to Tanaka to make up for this admitted deficiency of Bills. However, Applicant respectfully submits that

Tanaka is not analogous art. Tanaka lies within a completely different technical field that is wholly unrelated to a method of journaling changes to system objects in database journals to which claims 46 and 68 are directed.

Indeed, Tanaka teaches a solution in the art of linking and compiling programming objects, which is wholly unrelated to database journaling. A person skilled in the database journaling art would not reasonably look to the art of linking and compiling to find a solution to the problem of synchronizing system object changes with associated database changes using an Audit Journal.

That is, Tanaka is concerned with making changes to libraries and modules at a system level for the purposes of programming, whereas certain embodiments of the claimed invention are directed to journaling system objects in database journaling. Furthermore, certain embodiments of the claimed invention are directed to the execution of a dummy function as a replacement to a system function as a whole, which would be understood by the skilled person to be at a user level, rather than a system level (i.e., a kernel level) as described in Tanaka. Therefore, the inventions of claims 46 and 68 are implemented at higher functional levels as compared to that of Tanaka. These fundamental differences make the combination of Tanaka with a database journaling system wholly incompatible.

This error is borne out in the alleged motivation for making the combination. One of ordinary skill in the art at the time of the invention would not have modified Bills in view of Tanaka in the manner alleged in the Office Action “to expand a programming function without altering the original programming function of the system.” Indeed, this rationale makes no sense in the context of prior art that it is not at all related to linking and compiling programming objects, or in the context of the instant disclosure, which is directed to solving the problems of

synchronizing system object changes with associated database changes using an Audit Journal.

This sort of ex post reconstruction of Applicant's claimed invention is impermissible. Thus, the § 103 rejections are improper for these additional reasons.

As a result of the above, there is simply no support for the rejection of Applicant's claims. Applicant respectfully requests that the Pre-Appeal Panel find that the application is allowed on the existing claims.